United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.4/SR.6-10

Summary Records of the 6th to 10th Meetings of the Fourth Committee

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume VI (Fourth Committee (Continental Shelf))*

not call for any limitation other than what was necessary to delimit the boundaries between two States, bordering on the same shelf, whose coasts were adjacent to or opposite each other. That form of exploitation was not subject to any legal limitation by reference to the depth of the superjacent waters.

13. He considered that, as a precaution against misunderstanding, the term " natural resources " needed definition. His delegation would submit certain amendments in due course.

14. The Netherlands Government agreed with the International Law Commission's view that the waters above the continental shelf were high seas.

15. There appeared to be some overlapping between article 61, paragraph 2, and article 70 ; it should be possible to deal with the subject either under section I, sub-section C (Submarines, cables and pipelines) or under section III (The continental shelf).

16. The phrase " unjustifiable interference " in article 71, paragraph 1, was too vague ; he stressed that in the balancing of the various interests involved the interests of navigation should take precedence.

17. The safety zones referred to in paragraph 2 of the same article should be clearly defined, and his delegation would submit amendments [2] proposing a safety zone of a radius of fifty metres around single installations, from which all ships except exploitation craft would be barred as a fire-prevention measure, and a further provision concerning groups of installations built at distances of less than one mile from each other under which it would be compulsory for the coastal State to give due notice of such groups and of additions to them, to mark them on all charts and to provide them with suitable identifying lights and fog signals. All vessels except exploitation craft and ships of less than 500 registered tons would be forbidden to enter the area occupied by such groups of installations.

18. The Netherlands Government gave its full support to article 73, and was in favour of extending the provision contained therein to cover disputes relating to any of the draft articles.

19. The Marquis de MIRAFLORES (Spain) said that, despite its long coast-line, his country had only a narrow continental shelf. Hence, it was not some selfish interest, but the wish to contribute to the formulation of rules acceptable to all States which governed his delegation's position. He hoped that the Conference would not let slip the opportunity for establishing the new concept of the continental shelf as part of international law. Statements already made at the Conference showed the importance which governments attached to the subject.

20. Because the concept was new, it was important to define it clearly. He agreed with the representative of Panama, who, at the 4th meeting, had stated that the term " continental base " was to be preferred to " continental shelf ". Article 67 should define the limits of the continental shelf on the basis of specific criteria, taking account of all submarine zones that formed a geological unit with the coast.

21. He believed it would be better to avoid using such expressions as " sovereignty " or " jurisdiction and control " and references to the sea as a *res nullius* ; rather, the draft provisions should describe the coastal State as the sole owner of the right to explore and exploit the natural resources of the continental shelf. The rights in question should be regulated in terms respecting the principle of the freedom of the seas, which had so largely helped to spread civilisation throughout the world and to create the community of nations. The same principle, applied to outer space, would open new horizons for mankind. References to that principle and the consequent rights of maritime and aerial navigation, fishing and the laying of cables, should be included in the final text. It should also be specified that the natural resources to be exploited by the coastal State were restricted to mineral resources, as the International Law Commission had originally suggested.

22. The Spanish Government would favour the idea of including a reference to a safety zone or a radius of 500 metres, or some similar specific and reasonable extent around installations employed in the exploration and exploitation of the resources of the continental shelf.

23. Spain supported article 73, since it did not exclude peaceful means of settlement other than submission to the International Court.

24. He would make detailed comments at a later stage and propose amendments where suitable.

The meeting rose at 4.15 p.m.

[2] Proposal subsequently circulated as document A/CONF. 13/C.4/L.22.

SIXTH MEETING

Monday, 10 March 1958, at 10.45 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. PFEIFFER (FEDERAL REPUBLIC OF GERMANY), MR. ARREGLADO (PHILIPPINES) AND MR. CACCIAPUOTI (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION)

1. Mr. PFEIFFER (Federal Republic of Germany), while expressing his government's warm appreciation of the valuable work done by the International Law Commission, said that the purpose of the memorandum (A/CONF.13/C.4/L.1) which his delegation had submitted on the exploration and exploitation of the subsoil of the high seas was to propose a system in closer accord with the principles that the International Law Commission had so vigorously affirmed in various passages in its reports, more specially in relation to the freedom of the high seas as defined in article 27. Freedom to explore or exploit the subsoil of the high seas should be included among the other freedoms established by that article. That freedom had always existed potentially, but it had only recently acquired practical importance as a result of technological discoveries.

2. His delegation welcomed that development, for it believed the exploitation of the subsoil of the sea to be

advantageous, not only to the coastal State, but to the whole of the international community as well. It felt, however, that when put into effect, that freedom should be subject to the same rules as the other forms of freedom of the high seas in relation to interference with navigation, fisheries, etc. It was difficult to understand why, when the international community had established rules binding on everybody for comparable matters, the same road should not be followed as regards the subsoil. Instead of that, the International Law Commission's draft conferred sovereign rights on the coastal State. His delegation saw a serious danger in that position, and certain statements on the epicontinental sea already made at the Conference, and the Mexican Government's proposal (A/CONF.13/C.4/L.2), only confirmed it in its fears. Sovereign rights invariably tended to expand and States tended to be less and less willing to accept a restrictive interpretation.

3. His delegation felt therefore that it was justified in proposing a system based on regulated freedom. Under that system, the international community would establish the basic rules for the exploration and exploitation of the subsoil of the sea, and those rules would be supervised by the coastal State, any disputes being settled by an international court. That would have the effect of keeping the legislative and executive functions separate, a procedure amply justified by history.

4. The advantages of the system proposed by his delegation were, first, that it would preserve intact the principle of the freedom of the high seas, and the continental shelf outside the territorial sea would remain common property available to all peoples alike. Secondly, exploitation of the subsoil resources would be facilitated to the advantage of all, the use of the appropriate techniques would be ensured, abuses would be prevented and the other freedoms of the high seas safeguarded. Thirdly, the coastal State would act not as a sovereign power, but in virtue of a mandate from the international community, to which it would remain responsible. On that point, the suggestion in paragraph 3 of his delegation's memorandum that the coastal State should " act on behalf of the international community " meant that that State would exercise its supervisory powers in the common interest of all users of the high seas. Fourthly, as there would be no sovereign rights over the continental shelf, there would be no need to seek for a delimitation of the continental shelf in breadth or depth. Lastly, as the regulation would only lay down certain fundamental principles it would be sufficiently elastic to make it possible to establish regional agreements to take account of local conditions.

5. His delegation recommended that system as being more appropriate to future developments than was the Commission's draft and as affording a better way of reconciling the interests of the coastal State with the needs of the international community. If some such basic principles could be agreed, there would be no difficulty in working out the details and his delegation would, in due course, propose the setting up of a subcommittee to produce a draft on the basis of the memorandum.

6. Mr. ARREGLADO (Philippines) remarked that concept of the continental shelf in article 67 was limited to that portion of the seabed and subsoil of the submarine areas adjacent to the coast which extended outwards underneath the high seas. The article did not apply to the island shelves of an archipelago like the Philippines which formed a continuous submarine platform around the perimeter of the archipelago and spread inwards towards its centre, and which were considered, both under the existing national legislation of the Philippines and under generally recognized rules and principles, to constitute part of the internal waters of the coastal State.

7. In the absence of an internationally accepted limit of the breadth of the territorial sea, any reference to it in article 67 would confuse rather than clarify the legal limits of the continental shelf. Moreover, most of the rules contained in the articles relating to the continental shelf were intended to delimit the rights of coastal States with regard to the superjacent waters. For all those reasons, the delegation of the Philippines felt that the words " but outside the area of the territorial sea " in article 67 should be replaced by " underneath the high seas ", which corresponded more closely to the wording of the United States proclamation of 1945, a United Kingdom Order in Council of 1948 relating to the boundaries of the colony of the Bahamas, and Philippine legislation on the subject of the continental shelf.

8. Article 68 should be regarded as merely declaratory of the sovereign rights of the coastal State to explore and exploit the natural resources of its continental shelf; the existence of such rights was not derived from any specific provision of international law, but was inherent in the sovereignty which the coastal State exercised over the adjacent land territory.

9. At the same time, the Philippine delegation fully supported the principle that the exploration and exploitation of the natural resources of the continental shelf under the high seas must not result in any unjustifiable interference with commercial navigation in the superjacent waters.

10. While agreeing that the construction and maintenance on the continental shelf of installations necessary for the exploration and exploitation of its natural resources must be regulated by means of conventional arrangements, the Philippine delegation felt that the wording used in article 71, paragraph 2, involved a contradiction in terms when it stated that " the coastal State is entitled to construct and maintain " such installations " subject to the provisions of paragraphs 1 and 5 of the said article ", since that made it appear as if that right was conferred by some rule of international law, whereas in fact it was necessarily included among the sovereign rights which the coastal State exercised over the continental shelf under article 68.

11. The Philippine delegation would submit during the second stage of the Committee's work further observations and, if necessary, concrete proposals on the articles under consideration.

12. Mr. CACCIAPUOTI (United Nations Educational, Scientific and Cultural Organization), speaking at the invitation of the CHAIRMAN, presented a memorandum by the Secretariat of his organization entitled " Scientific Considerations Relating to the Continental Shelf " (A/CONF.13/2), together with resolutions by and a communication from the International Council of Scientific Unions on the articles concerning the conti-

nental shelf, transmitted by UNESCO (A/CONF.13/28).

13. Mr. NIKOLIC (Yugoslavia) asked the representative of Mexico whether the expression " sovereignty over the seabed and subsoil of the continental shelf and over the natural resources thereof " in his delegation's proposal (A/CONF.13/C.4/L.2) was intended to include fishing rights.

14. Mr. GÓMEZ-ROBLEDO (Mexico) gave the provisional answer that his delegation's intention had been to include certain types of fish found on the continental shelf, but said he would give a further clarification later.

The meeting rose at 11.20 a.m.

SEVENTH MEETING

Tuesday, 11 March 1958, at 11 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. ALVAREZ AYBAR (DOMINICAN REPUBLIC), MR. CAICEDO CASTILLA (COLOMBIA), MR. LETTS (PERU) AND MR. QUARSHIE (GHANA)

1. Mr. ALVAREZ AYBAR (Dominican Republic) said that there were two main schools of thought with respect to the continental shelf. The first was in favour of some form of international supervision, and the second was in favour of some form of State action by individual States. The Federal Republic of Germany in its memorandum (A/CONF.13/C.4/L.1) and the representative of China (4th meeting) had expressed support for international supervision. However, as the International Law Commission had said in paragraph 3 of its introductory commentary on the section relating to the continental shelf, internationalization could not provide a solution to the problem, since it would not ensure the effective exploitation of the natural resources of the shelf.

2. Article 67 gave firm backing to the view that the rights in the continental shelf should be vested in the coastal State. The final clause, extending the limit of the shelf beyond a depth of 200 metres to where the depth of the superjacent waters admitted of the exploitation of the natural resources of the continental shelf, had been added as a result of the decision reached at the Inter-American Specialized Conference on " Conservation of Natural Resources : The Continental Shelf and Marine Waters " held at Cuidad Trujillo in 1956. If the basic principle of article 67 were accepted, three possibilities offered themselves : either the extent of the continental shelf could be delimited by reference to a purely oceanographic line ; or it could be fixed at the line where the shelf descended to a depth of 550 metres, as the Netherlands representative had proposed (5th meeting) ; or, lastly, it could be defined in the terms used in the International Law Commission's draft.

3. His delegation supported the draft of article 67 for the following reasons. The memorandum on the continental shelf by the secretariat of the United Nations Educational, Scientific and Cultural Organization (UNESCO) " Scientific Considerations Relating to the Continental Shelf " (A/CONF.13/2) made it clear that the geological and oceanographical knowledge of the continental shelf was too incomplete to form a satisfactory basis for international law ; moreover, the geological concept would bring within the jurisdiction of a State many depths or depressions, submarine valleys or deeps, although at a depth exceeding 200 metres and whether exploitable or not at such a depth, which would create situations that would be unjustifiable in law. Further, the international law relating to the continental shelf should take account of economic and historical no less than of geological factors. So far as the Netherlands proposal for a 550-metre line was concerned, he would consider that the terms of article 67 were so general that they allowed for such a possible extension. The thought underlying that article was that the continental shelf was a prolongation of the land and, therefore, subject to considerations of contiguity or proximity. The decisive criterion was that of proximity. Exploitation beyond the point at which the relationship of proximity ended might be based on occupation, but it would not be covered by the provisions of articles 67 and 68.

4. His delegation accordingly supported the present draft of article 67, not as providing a perfect solution, but as offering the best possible prospect of agreement and the best basis for the new legal institution of the continental shelf. It might be said that such words as " contiguity " or " proximity " (cf. paragraph 8 of commentary on article 68) were too vague to be used as legal terms, and the same criticism had been voiced concerning the expressions " reasonable measures " (article 70) and " unjustifiable interference " (article 71). However, similarly vague expressions, equally open to interpretation, were used in private law. The use of such expressions was one reason why provision had been made in article 73 for the settlement of disputes.

5. He did not feel that, if the system proposed by the International Law Commission were adopted, there would be any conflict with the interests of scientific research with which UNESCO was concerned.

6. The Conference had the opportunity of deciding whether the existing practice of unilateral action by States would be replaced by international agreement.

7. Mr. CAICEDO CASTILLA (Colombia) stated that his country's legislation contained no provisions on the subject of the continental shelf, as the Colombian Government had always hoped that the matter would be regulated by international agreement. President Truman's proclamation of 1945, though it marked the beginning of an important and salutary development, nevertheless represented a national and unilateral viewpoint ; it had been followed by many other statements of a national character, often conflicting in nature. There was need for general solutions which, while representing a new approach in international law, did not unduly contradict existing traditional rules. In other words, while safeguarding the rights of coastal States, those solutions

should also protect the general interests of the community of nations.

8. The Colombian delegation believed that the International Law Commission's articles on the continental shelf fulfilled all those conditions, though it would offer suggestions for the amendment of certain provisions. It agreed with the definition of the continental shelf given in article 67. If the main — indeed, the sole — purpose of the establishment of that juridical institution were the exploration and exploitation of the natural resources, the logical criterion for its definition should be that of possible exploitation. Limitation of the continental shelf by fixing a maximum depth of 200 metres would be tantamount to disregarding continuous scientific progress in respect of exploitation. The convention which would be adopted might, in the course of time, become ineffective and out of date or require constant substantive modification, whereas any work of codification was necessarily designed with the purpose of retaining its validity as long as possible.

9. Far from granting a monopoly over the continental shelf to certain coastal States, as some delegations had argued, the definition given in article 67 ensured equal rights and opportunities for all coastal States. The only possible inequality arising from the terms of the article was that technically more advanced States might possess better means of exploiting the natural resources of the continental shelf than other States.

10. The Colombian delegation thought therefore that any international body which might be set up for scientific research and assistance should be asked to study the possibilities of financing the economically less developed countries and giving them appropriate assistance with regard to the exploration and exploitation of their continental shelf.

11. Finally, the Colombian delegation welcomed the fact that the wording of article 67 corresponded to that recommended by the Inter-American Specialized Conference on " Conservation of Natural Resources : The Continental Shelf and Marine Waters " held at Ciudad Trujillo in March 1956.

12. He expressed the opinion that article 68 should be amended to read " The coastal State exercises sovereignty over the continental shelf ", because the term " sovereignty " was the best one to use in determining the rights of the coastal State. A number of governments, including those of the United Kingdom and France, upheld the view that the coastal State exercised the same rights over the continental shelf as over its land territory. He recalled, however, that at the conference held at Ciudad Trujillo in 1956 the Colombian delegation had agreed to the words " jurisdiction and control " in place of " sovereignty "; the present conference might adopt the same wording to achieve the widest possible measure of agreement.

13. The Colombian delegation had no objection to articles 69, 70 and 71 and warmly supported article 73, because Colombia's international policy was traditionally based on the principle of the peaceful settlement of international disputes by compulsory juridical means.

14. The Colombian delegation regarded article 72 as being particularly important ; it was based on the formula proposed by the committee of experts on the delimitation of territorial waters ; that formula was the impartial expression of the technique under which the delimination of the continental shelf of adjacent States or whose coasts were opposite to each other should be constituted by the median line every point of which was equidistant from the baselines from which the width of the territorial sea of each country was measured. Colombia accepted that system, which it would not hesitate to apply in the delimitation of its own continental shelf, but would like the drafting of article 72 to be improved. The provision under which the delimitation could be determined by agreement between the States concerned was obvious and, consequently, unnecessary, because sovereign States could always solve their problems in the manner that they considered most suitable. But it would not be right to advocate negotiation as the first step and as a general system, rather than the application of the general rule suggested by the technique, for that would lead to endless disagreement. In an attempt to codify the law of the sea, it must not be overlooked that the aim in view was to prevent difficulties arising or to establish precise rules for overcoming them. That was the only way of achieving solid and fruitful results. The method that should be followed was that of jurists endeavouring to establish a lasting juridical system. Clear and equitable rules which would avoid or eliminate the possibility of future disputes must be formulated. According to the text of article 72, it only needed the refusal of one of the States concerned to conclude an agreement for the system of median lines to be applicable. Moreover, the term " special circumstances " was vague and could give rise to disagreement. In that connexion, his delegation appreciated that certain exceptional situations justified special regulations, but the appreciation of the circumstances determining such situations should not be left to one of the parties concerned.

15. In conclusion, he expressed agreement with the view put forward by the representative of Panama at the Committee's 4th meeting to the effect that the proposed international convention should contain a new article proclaiming the freedom of scientific research into the continental shelf.

16. Mr. LETTS (Peru) said that on 1 August 1947 Peru had proclaimed its sovereignty over a maritime zone which included the continental shelf, and had followed that proclamation by the Declaration of Santiago, which brought its policies into line with those of Chile and Ecuador. In so acting, his country had, like other States, helped to create an international law of the sea arising out of new requirements not covered by existing law. In defining the law concerning the continental shelf, the Conference would not merely be codifying existing law but legislating in the strict sense of the word.

17. The memorandum of the Federal Republic of Germany stated that " According to the international law in force, the coastal State has no rights over the continental shelf beyond the outer limit of its territorial sea " (A/CONF.13/C.4/L.1, para. 2). He could not agree with the underlying argument that international law was based solely on treaties ; indeed, most of the rules relating to the sea, including those concerning the territorial sea, had not originated in treaty law. Nor

could he agree with the contention in the same document that " anyone is free to explore and exploit the subsoil of the sea outside the territorial sea ", for that view would produce the absurd consequence that a State could exploit the natural resources of the continental shelf at a short distance from the coast of another State, in defiance of the accepted principle of proximity, which was the basis of the sovereign rights of the coastal State over the continental shelf adjacent to its territory.

18. The concept of the continental shelf, like that of the inherent right of the State to exploit and conserve the natural resources of the sea near its coast, was an innovation, but neither of those ideas constituted a break with any former international law ; they were merely new developments attributable to scientific progress, and it was consistent with the principles of international law for States to claim rights not contemplated by pre-existing rules.

19. The International Law Commission had applied very different principles to two similar situations ; it had recognized the sovereign right of the coastal State to exploit mineral resources, principally oil, which could only be exploited by industrialized countries, but not similarly sovereign rights over the living resources of the sea, on which many coastal States depended for the livelihood of their people. The right of unrestricted fishing on the high seas had been founded on the belief that the living resources of the sea were inexhaustible ; but modern fishing methods had disproved that view, and there was therefore no longer any basis for unrestricted fishing rights. His delegation considered that it was only logical that States claiming rights over the continental shelf should also claim rights over the superjacent waters. Similar views had been expressed by the Government of Iceland (A/CONF.13/5, section 8).

20. Mr. QUARSHIE (Ghana) said that the Conference in its deliberations should rise above purely national claims and interests, and should be guided by the desire to perform a service of lasting value to the community of nations as a whole.

21. His delegation was in general agreement with the provisions of articles 67 to 73. It was anxious, however, that those provisions should be as equitable as possible.

22. While the definition proposed in article 67 was reasonably sound from the purely legal viewpoint, it did not take sufficient account of the economic and social interests of certain smaller States and might operate to the disadvantage of those countries, of which Ghana was one, which possessed a very narrow continental shelf as a result of a sharp drop of the seabed near the coast. Under that definition the limit of Ghana's continental shelf would not be far removed from the limit of its territorial sea. Since, in addition, Ghana depended almost exclusively on fisheries for its protein supply, and was moreover a young country with relatively little technical experience and equipment, the problems arising from exposing it to competition with States of greatly superior technical ability in the exploitation of the living resources of the sea would be extremely grave.

The meeting rose at 11.50 a.m.

EIGHTH MEETING

Wednesday, 12 March 1958, at 10.45 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. NIKOLIC (YUGOSLAVIA), MR. JHIRAD (INDIA), MR. LÜTEM (TURKEY), MR. TAANING (DENMARK), MR. KANAKARATNE (CEYLON), MR. NAFICY (IRAN) AND MR. BAZ (LEBANON)

1. Mr. NIKOLIC (Yugoslavia) paid a tribute to the International Law Commission for its patient and conscientious work on the complex problem of the continental shelf. Although the concept of the continental shelf, which was a relatively new one in international law, placed some restriction on the age-old principle of complete freedom of the high seas, economic needs made its recognition essential. Some thirty States had already published unilateral declarations extending their sovereignty to submarine areas beyond the limits of the territorial sea. A new international practice had thus been created and its substance was not contested.

2. The proposal in the memorandum submitted by the Federal Republic of Germany (A/CONF.13/C.4/L.1) aimed at abolishing the institution of the continental shelf and replacing it by the principle that anyone was free to explore and exploit the subsoil of the sea outside the territorial sea. That was an attempt to reverse a situation already accepted as established international practice. The International Law Commission had considered similar proposals in the past and had rejected them on that and other grounds. The Yugoslav delegation endorsed the Commission's decision and opposed the proposal submitted by the Federal Republic of Germany, which it regarded as a typical effort to restrict to the advantage of the more highly industrialized countries the interests of those which had not yet reached the necessary level of development.

3. Another important point in which clear rules were required was the relationship between the right of a coastal State to its continental shelf and the claims of other States to exploit in that area of the high seas the living resources attached to the seabed. His delegation therefore did not oppose the formal and collective recognition of what was already an established legal institution, though it was not in agreement with some of the provisions of the articles drafted by the International Law Commission. For instance, he criticized as too vague the definition of the maximum depth of the continental shelf (article 67), that of the boundaries of protective zones for technical installations (article 71) and that of the boundary between adjacent continental shelves (article 72).

4. The proposals of certain States to the effect that the rights of coastal States should be extended beyond the limits contemplated by the International Law Commission — proposals which were not necessarily linked with

the exploitation of the continental shelf and its superjacent waters — represented a danger to the principle of freedom of the high seas. Moreover, the institution of the continental shelf should not exempt the coastal States from duties with regard to the regulation and conservation, in the general interests of the international community, of the living resources of the high seas in the area of the continental shelf.

5. Mr. JHIRAD (India) said that his delegation was in substantial agreement with the articles under consideration, and congratulated the International Law Commission on its work. Referring to criticisms addressed to the definition of the continental shelf given in article 67, he remarked that a distinction should be drawn between the geological meaning of the term and its significance from the economic viewpoint; it might, indeed, be preferable to employ two entirely different terms. While at the present stage of economic development the possibility of exploiting the natural resources of the seabed and subsoil of submarine areas in the proximity of a coast was limited to the confines of the continental shelf as defined in geology, that need not always remain the case. Moreover, if the criterion of depth alone were applied, a situation might arise where any State would be free to exploit the natural resources at a very short distance from the coastal State. In the Indian delegation's opinion, the elastic definition proposed in article 67 would suffice to cover normal requirements.

6. Commenting on the objection raised by some delegations to the effect that the definition as it stood would operate to the disadvantage of States possessing an exceptionally narrow continental shelf, he remarked that the case was to some extent covered by the statement contained in paragraph 8 of the International Law Commission's comments on article 67. He felt, however, that the criteria proposed in that text were insufficiently objective, and expressed readiness to consider any reasonable proposal that would make for the improvement of that or, indeed, any other article.

7. With regard to article 68, the Indian delegation opposed the suggestion that the natural resources referred to should be limited to mineral resources. The technical possibilities of many under-developed States were limited to the exploitation of organic resources; the sovereign rights of coastal States in respect of the continental shelf should not exclude the exploitation of the flora and fauna living in constant physical and biological relationship with the seabed, and sedentary fisheries in particular. Unless that term was interpreted reasonably, there was a danger of wider claims affecting the character of the superjacent waters as high seas.

8. Similarly, the Indian delegation opposed the view that the right to explore and exploit the continental shelf should be based on effective occupation and control. The corollary of that theory was that, in the absence of effective occupation and control by the coastal State, any other State would be entitled to take over such control. The adoption of that principle would seriously compromise the peaceful co-existence of States. Likewise, the proposal contained in the memorandum submitted by the Federal Republic of Germany (A/CONF.13/C.4/L.1) was fraught with dangers. Any attempt to treat the area of the continental shelf as having the same character as the high seas was likely to be countered by claims intended to curtail the existing principle of freedom of the high seas. Furthermore, despite the safeguards envisaged in the memorandum, the effect of the proposal would be to encourage irresponsible exploitation, thus impairing harmonious relations between nations.

9. In its effort to strike a balance between the special interests of the coastal States and those of the international community at large, the International Law Commission had adopted certain subjective criteria expressed in terms such as " unjustifiable interference ", " reasonable distance ", etc. Similar subjective tests were laid down in Indian national legislation; they were, to some extent, inevitable where a comparative assessment of different interests was involved. The remedy in the event of a dispute, failing other means of settlement, was a judicial decision; the Indian delegation accordingly accepted article 73, subject, however, to the declaration made in pursuance of Article 36 of the Statute of the International Court of Justice.

10. Mr. LÜTEM (Turkey) stated that his delegation was prepared to accept articles 67 to 73 as a basis for discussion. The concept of the continental shelf was a recent one in international law, embodied only in unilateral declarations; the view that the articles prepared by the International Law Commission already formed part of positive international law was invalidated by well-known arbitration decisions. Whereas the problem of fisheries in the high seas was already regulated by a number of regional agreements, that of the continental shelf formed the subject of only one such agreement. It was to be hoped that the work of the Conference would result in the admission of the concept of the continental shelf in international law.

11. With regard to the definition of the continental shelf given in article 67, Mr. Lütem recalled the various stages by which the International Law Commission had arrived at the present definition. In the opinion of his delegation, the second of the two proposed criteria was so ambiguous that, far from avoiding conflicts, it might actually create them. A precise delimitation of the continental shelf was essential.

12. Similarly, the words " a reasonable distance " in article 71, paragraph 2, were insufficiently clear and were likely to lead to different interpretations and possibly abuses. The suggestion mady by the representative of Sweden at the 4th meeting of the Committee to the effect that a maximum width of 500 metres should be adopted for the establishment of safety zones around installations on the continental shelf would obviate future disagreement.

13. Mr. TAANING (Denmark) remarked that much could be said in favour of limiting the rights of coastal States in respect of the continental shelf to mineral resources only. If that interpretation were adopted, the special rights of coastal States with regard to the exploitation of animate and other organic resources of the seabed of the continental shelf should, however, be safeguarded by the establishment of special fishery

limits, provisions for conservation measures in the area adjacent to the territorial sea, etc. Denmark was not at present interested in the exploitation of mineral resources in the seabed, but since both the Faroes and Greenland were involved, the situation might change in the future. A depth of more than 200 metres might have to be considered with regard to the Faroes. If, however, the provisions of article 68 extended to organic resources as well, all parts of the Danish Kingdom would be interested.

14. The Danish delegation would support some of the amendments to articles 67 to 73 proposed by other delegations. In particular, it would prefer the words " sovereign rights " in article 68 to be replaced by " control and jurisdiction "; any reference to sovereignty, even if followed by a restrictive clause, might cause difficulties during international armed conflicts or with regard to scientific research.

15. The principle stated in article 71, paragraph 1, was highly important, as also was the rule set forth in paragraph 4 of the same article. The Danish delegation felt that that maximum radius of the safety zone established around installations on the continental shelf should be stated in article 71, paragraph 2, and not only in the International Law Commission's commentary on the article as at present.

16. Commenting on the question of the freedom of research, he would draw attention to paragraph 10 of the International Law Commission's commentary on article 68 and to the communication from the International Council of Scientific Unions transmitted by UNESCO (A/CONF.13/28). The argument advanced in paragraph 6 of that communication that it was impossible to draw a valid distinction between the seabed and the superjacent waters as far as the environment of the geophysical study of the ocean bottom was concerned might equally apply to many forms of important biological research into the animate life of the continental shelf. All scientific research was carried out with the intention of open publication and was of interest not only to coastal States but to mankind in general. The fact that the International Law Commission in its commentary expected the coastal State to refuse its consent to scientific research, if only exceptionally, was causing alarm in scientific circles. The only way to preserve the freedom of research was to include in the relevant article a statement to the effect that scientific investigations in the continental shelf would be conducted freely, provided the coastal State or States were duly notified. They would not have the right to prevent such investigations, but would be entitled to follow and observe the scientific work carried out.

17. Mr. KANAKARATNE (Ceylon) said that his country's position as an island, its situation on world trade routes and the dependence of its inhabitants on the living resources of the sea made its interest in the law of the sea as vital as that of the greatest of the maritime Powers.

18. In passing the Pearl Fisheries Ordinances of Ceylon of 1925, Ceylon had been one of the first States to embody in its legislation the concept of the continental shelf, which was based on geological fact. Ownership of the seabed of its territorial sea by a coastal State was fully accepted, and it had now become necessary to allow the coastal State to exercise certain sovereign rights over its continental shelf. These rights were recognized by draft article 68, subject to the preservation under article 69 of the principle of freedom of the superjacent waters and the airspace above them. His delegation would speak further on the actual formulation of those articles at a later stage.

19. He noted that according to paragraph 3 of the International Law Commission's commentary to article 68, sedentary fisheries were not to be excluded from the régime adopted. Ceylon's rights over its pearl fisheries were based on immemorial usage and uninterrupted ownership, going back as far as the fourteenth century, and he would quote various authorities in support of that contention. He felt that those grounds for ownership, as applied to fishing rights outside the territorial sea, had not been given adequate consideration by the International Law Commission's recommendations. More detailed comments on that aspect would be made by his delegation in the Third Committee. Some objections had been raised to the concept of the continental shelf as revolutionary, but it was based on the practice of a large number of States following the Truman declaration of 1945. It was high time that the welter of unilateral decisions were co-ordinated by the Conference in a way that would preserve the freedom of the seas and regulate the special interests of the coastal State in the exploration and exploitation of the natural resources of the continental shelf.

20. His delegation would carefully consider the proposals submitted by the delegations of Burma (A/CONF.13/C.4/L.3), Mexico (A/CONF.13/C.4/L.2) and Panama (A/CONF.13/C.4/L.4) but it could not agree with the opinion expressed by the representative of the Federal Republic of Germany in its memorandum (A/CONF.13/C.4/L.1) or accept the body of rules proposed therein. He would comment later on all those proposals. Ceylon agreed with the views expressed by the International Law Commission in paragraph 4 of its introductory comment to the articles on the continental shelf.

21. His delegation accepted the system embodied in articles 69 to 73 but would comment later on the expressions " unjustifiable interference " (article 71) and " justified by special circumstances " (article 72).

22. If the Conference were to bring the International Law Commission's work to a successful conclusion, some countries would necessarily have to make concessions. Ceylon belonged to a part of the world which was described as under-developed and had received much help from wealthier industrial countries, in the form of technical aid, loans, etc. Those countries now had an opportunity to give help of a different kind, which would cost them less in money, but would mean more to the peoples of the less developed countries, because it would recognize their right to develop the exploration and exploitation of the natural resources of the seas off their shores and to fish in competition with richer and more powerful countries. For a long period the great maritime powers had been able to maintain the law of the sea at a certain stage through their own might ; now, however, one half of the world was making

great strides in developing economically, politically and socially. That development was the main justification for the International Law Commission's statement in paragraph 1 of its commentary to article 71 that " The progressive development of international law, which take place against the background of established rules, must often result in modification of those rules by reference to new interests or needs ". If those views were fully accepted, the Conference might indeed hope to achieve success.

23. Mr. NAFICY (Iran) expressed appreciation of the International Law Commission's work and said that the draft articles referring to the exploration and exploitation of the seabed were not in conflict with existing legislation in Iran. However, some of the criteria referred to, though suitable for application to open seas, such as the Sea of Oman and Iranian waters west of the Straits of Ormuz, could not apply to shallow waters covering submerged lands, especially if they were of a deltaic type, as in the Persian Gulf. His delegation would accordingly submit amendments with a view to making the articles more applicable to such special conditions as he had described.

24. Mr. BAZ (Lebanon) said that in spite of various criticisms levelled against the legal concept of the continental shelf, as being revolutionary, vague, illogical and so forth, it represented a practical reality and not a mere legal fiction. The distinction between the sea subsoil outside the territorial sea and the superjacent waters, to which objection had been made, was analogous to such concepts in private law as the distinction between property and its usufruct. The coastal State would not, as some had maintained, be given rights over the continental shelf outside its territorial sea very similar to those it exercised over the territorial sea, since the rights were restricted to exploring and exploiting the natural resources of the continental shelf.

25. Professor Gidel had pointed out that the concept of the continental shelf had a practical basis in that it was necessary for a coastal State to protect itself against the possibility that other States might undertake exploitation of its continental shelf at short distance from its shores. Many States had recognized the new concept in their legislation and hence it had become necessary to embody it in international law. It was true that time would bring more accurate knowledge of the continental shelf, but there was no need to wait so long before laying down the principles that should govern the continental shelf.

26. The principle of the freedom of the high seas made it necessary to set an exact limit to the continental shelf, and he felt that it would be necessary to amend article 67 by deleting the clause extending the continental shelf beyond the depth line of 200 metres, since that extension, in conjunction with the principles of the territorial sea and the contiguous zone, might make considerable inroads on the high seas. His delegation, while agreeing in principle with the draft articles 67 to 73, would later submit an amendment to article 67.

The meeting rose at 12.10 p.m.

NINTH MEETING

Thursday, 13 March 1958, at 10.45 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. TSURUOKA (JAPAN), MR. GÓMEZ ROBLEDO (MEXICO), MR. FERREIRA BOSSA (PORTUGAL), MR. BARROS (CHILE), MR. GABRIELLI (ITALY), MR. ROSENNE (ISRAEL) AND MR. DE LA PRADELLE (MONACO)

1. Mr. TSURUOKA (Japan) said that, although the need to exploit the resources of the continental shelf for the benefit of mankind was generally recognized, Japan found it difficult to admit that it was necessary to vest a monopoly of rights in the coastal State. The Conference was dealing with a new concept, and it was accordingly important that the interests of the whole international community should be considered rather than those of any nation or group of nations. His delegation agreed with the International Law Commission that exploitation of submarine wealth should not interfere with the freedom of navigation and fishing on the high seas, and it regarded such a clause as article 71 as indispensable.

2. Japan was not able to approve the change of wording in article 68 mentioned in paragraph 3 of the International Law Commission's commentary, which had the effect of including the living resources of the continental shelf. The creatures living at the bottom of the sea on the continental shelf were not an integral part of the seabed; the cases of both the so-called sedentary fisheries and bottom fish had been governed for centuries by traditional rules of the international law of the sea and had not caused any difficulty. He would speak further on article 68 when the time came to discuss it in detail, but must make it clear that it would be impossible for Japan to support any system which would have the effect of giving the coastal State sovereign rights over the living resources of the high seas.

3. Mr. GÓMEZ ROBLEDO (Mexico) said that by a declaration of October 1945, his country had been one of the first to claim rights over the continental shelf and its natural resources, on the grounds that the continental shelf was an integral part of the mainland. Mexico was anxious to co-operate in seeking a solution that would reconcile the interests of both the coastal State and the international community. Scientific, technical and legal developments over the past ten years justified the establishment of rules governing a domain which had hitherto not been regulated by international law.

4. His delegation was in general agreement with the International Law Commission's draft, which represented a balanced view of established practice with regard to the continental shelf. However, a large conference of plenipotentiaries such as the present one might be better able in some cases to reach solutions consonant with the facts and with the legislation of

individual States. Such solutions, incidentally, were suggested, often implicitly and even explicitly in the commentary that the International Law Commission had added to the draft articles. That was the basis of the Mexican proposal (A/CONF.13/C.4/L.2).

5. The text of article 67 should include a reference to special cases — mentioned in paragraph 8 of the International Law Commission's commentary — of areas of the continental shelf separated from it by channels deeper than 200 metres, but such special cases should not be dealt with as exceptions to the general rule. It would be better to add to article 67 a paragraph to the effect that the outer limit of the continental shelf would not be affected when it included areas divided from it by channels of a greater depth than that laid down in the first paragraph of the article. If other delegations supported that view, he would submit an amendment to that effect.

6. The Mexican proposal made the unequivocal claim that the coastal State exercised sovereignty over the seabed and subsoil of the continental shelf and over its natural resources, and he believed that there was some support for that view. It was based on the argument that if the continental shelf was indisputably a continuation of the mainland, it should be governed by the same legal régime, and he would cite authorities in support of that contention. The International Law Commission appeared to admit the effects of sovereignty without admitting the sovereignty itself, for jurisdiction and control could have no other basis than sovereignty.

7. In its draft, the Commission, recognized " sovereign rights ", and thus went a step further than in the earlier draft when the expression " jurisdiction and control " was used. But sovereign rights could not exist apart from sovereignty. In paragraph 2 of its commentary to article 68 the Commission referred to the importance of not infringing the full freedom of the superjacent sea and the air space above it. Any danger that sovereignty over the seabed and subsoil of the continental shelf might lead to claims of sovereignty over the superjacent sea and the air space above it could not be guarded against by a mere change of drafting. The sovereignty of a State over the air space above its territory had not been accepted merely as a logical development of its sovereignty over its territory, but on other grounds.

8. His delegation's views were not based on any thought of future claims or on sympathy for any particular State or group of States, but on an objective view of generally accepted international practice, and it was on those grounds that Mexico proposed that the coastal State should have sovereignty over the seabed and subsoil of the continental shelf and its natural resources.

9. His delegation's proposal omitted any reference to the exploration and exploitation of the natural resources of the continental shelf because it believed that sovereignty was exercised by the coastal State to the exclusion of other States, as the International Law Commission admitted in paragraph 2 of its commentary on article 68, and that, accordingly, no form of actual or theoretical occupation by the coastal State was required.

10. Mexico did not consider that natural resources should be limited to mineral resources, and he would refer to the argument advanced by the representative of Peru (7th meeting) that, whereas, only the industrialized countries could develop the mineral resources, especially oil, many under-developed countries were dependent on the living resources of the sea for the feeding of their people. A definition of the living resources of the continental shelf restricted to those adhering to the seabed was too narrow. The definition should include the whole group of mineral and vegetable organisms in direct and necessary dependence on the seabed, its legal status being determined by the degree of that dependence. The Ciudad Trujillo Conference had set up a working group on the sea bottom, which had described two systems, the pelagic, living in the waters of the sea, and the benthonic, which was the conjunction of organisms depending on the sea bottom. The benthonic group consisted of three categories : first, sessile organisms such as algae, sponges, coral, oysters and pearl oysters ; secondly, organisms depending on the sea bottom but capable of leaving it and moving above it ; and thirdly, species that were capable of moving but that remained on the sea bottom during the fishing period because of feeding or reproductive requirements. The shrimp had been recognized as a benthonic organism in a United States government publication, while Public Law No. 31, approved by the United States Congress on 22 May 1953, included fish, shrimps, oysters, lobsters, crabs, sponges and pearl oysters among the natural resources of the continental shelf. The Mexican delegation accordingly believed that natural resources should include all living species that could be said to belong to the sea bottom, at least at the time when fishing was being carried on, since fishing was the activity which international law was particularly concerned to guide and regulate.

11. Mr. FERREIRA BOSSA (Portugal) said that international law, which was a reflection of man's life, must inevitably develop in the course of the centuries. The International Law Commission's draft reconciled established principles of international law and new developments brought about by technological progress. The subject of the continental shelf was of concern to Portugal both in its metropolitan territory and in its overseas provinces. Portugal, in law No. 2080 of 21 March 1956, had decreed that the seabed and subsoil of the continental shelf were the property of the State, and had thus been the first European country to proclaim its rights over the continental shelf in all its territories, though many States in other parts of the world had already passed similar legislation. Portuguese law assumed that the exploitation of the resources of the continental shelf placed no limits on the freedom of the high seas and of the epicontinental waters other than those permitted by international law. That interpretation was based on a distinction between the subsoil of the sea on the one hand and the superjacent waters and the living resources they contained on the other. The seabed and subsoil of the continental shelf were considered by geology to be a continuation of the mainland. Although objections had been raised to article 68 and the final clause of article 67, the rights of the coastal State were restricted to the exploitation of natural resources, and the draft articles therefore constituted, not a break with existing international law, but an amplification of it. The concept was related to the idea known in Roman

law as *jus utendi et abutendi*. However, the notion of *jus abutendi* had disappeared from modern international law, which was concerned, as was the present conference, with the welfare of mankind.

12. Mr. BARROS (Chile) said that in defining the continental shelf the International Law Commission's draft articles referred to two criteria, a depth line, and possible exploitation. Reference to a geological criterion alone would create inequality between States and discriminate against those whose continental shelf did not go beyond the territorial sea. The Chilean Government had made that point in its comments on the draft articles on the continental shelf prepared by the International Law Commission in 1951.[1] The criterion of possible exploitation had been criticized, but Chile was strongly opposed to removing it from the definition in article 67. On the Chilean coast there were coal mines reaching a depth of 1,000 metres below sea-level and at a distance of several kilometres from the mainland; such cases should be taken into account in defining the continental shelf.

13. The rights of the coastal State over the continental shelf were defined in article 68 as rights to explore and exploit natural resources. That phrase was restrictive and implied a limitation of the sovereign rights of the coastal State; yet the provisions of article 69 would appear unnecessary if the rights concerned were in fact restricted to exploration and exploitation of natural resources. Chile accordingly supported the Mexican proposal (A/CONF.13/C.4/L.2). It was possible that as a result of technological progress sovereign rights over the continental shelf might be exercised for purposes not covered by article 68 in respect of exploitation, and he would quote as an example the radar installations set up by the United States on the floor of the Atlantic far from its shores. He felt therefore that the best course would be to recognize the sovereignty of the coastal State over the continental shelf and then attempt to specify the status of the superjacent waters, over which claims of sovereignty had been made by some governments. Chile maintained the position it had taken in 1952 that sovereignty over the continental shelf belonged *ipso jure* to the coastal State, and was therefore opposed to the notion that the submarine areas outside the territorial sea constituted a *res nullius*, open to exploitation by all. Those sovereign rights, of course, were subject to the limitations imposed by international law, which were covered by article 70.

14. He could not accept a restrictive definition of natural resources, which should include not only mineral resources, but also all the resources of the seabed and subsoil of the continental shelf.

15. For many countries the living resources of the sea were essential to the welfare and economic development of their peoples, as had been pointed out by the representatives of Ghana (7th meeting) and Ceylon (8th meeting). For Chile, its coastal waters were a vital area, essential in supplementing the products of the mainland. It was therefore the plain duty of the Chilean Government to protect the natural resources and regulate their exploration and exploitation.

16. If the continental shelf was recognized as being under the sovereignty of the coastal State, Chile could not agree to article 73 in its present form. However, his delegation would accept the principle that such disputes should be settled in accordance with the provisions of the United Nations Charter.

17. He drew attention to the close relationship between the articles under consideration by the Fourth Committee and the subjects allocated to other committees for example, the connexion between article 67 and the articles dealing with the breadth of the territorial sea, since the continental shelf was regarded as beginning where the territorial sea ended. There was also a relationship between the work of the Third and Fourth Committees. It might well be that the success or failure of the Conference would depend on decisions taken in other committees.

18. The Conference was legislating in the true sense of the word, since it was trying to reach agreement where no agreement had existed previously. In the past, a state of war had been considered sufficient excuse to limit and infringe such legal rights as the right of neutrality or freedom of trade and navigation. If that principle were accepted, it was far more justifiable that a peaceful organization such as the United Nations should endeavour to modify outworn formulae so as to pave the way for the introduction of principles more in accord with scientific and technological progress and the basic needs of the peoples it represented.

19. Mr. GABRIELLI (Italy) remarked that, while the concept of sovereignty was inherent in the relationship between a State and its territory and, by a logical process of extension, between a State and its territorial sea, it did not apply to the relationship of a coastal State to its continental shelf. Territorial sovereignty was an absolute and exclusive power which a State excercised over its territory. It was inconceivable that power of that nature should be exercised over areas which did not form part of the territorial domain.

20. Hence, it was incorrect to speak of the coastal State exercising sovereign rights over the continental shelf, as did article 68. The very expression "sovereign rights", implying as it did that sovereignty could be divided into a number of rights, was questionable. There could be no sovereign rights where there was no sovereignty. It might be argued that in arriving at the present wording of article 68 the International Law Commission had been guided by the fact that, whenever new rights were accorded to a State, the latter appeared as a sovereign personality in law. That was not, however, necessarily the case; a coastal State might exercise certain rights over the continental shelf, but not in its capacity as a sovereign personality.

21. A definition of the rights of States over the continental shelf consistent with the nature of those rights should be based on economic considerations. The object of such a definition was to make the utilization of certain resources of the continental shelf legitimate in international law. In other words, the right concerned was that of utilization, and therefore not an absolute right, but one subject to both technical and legal limitations.

---

[1] *Official Records of the General Assembly, Eighth Session, Supplement No. 9* (A/2456), Annex II.

22. The Italian delegation therefore believed that the position of the coastal State with regard to the continental shelf was merely that of a holder of rights of utilization. In that connexion, the formula proposed by the International Law Commission in its 1951 draft[1] referring rather to powers of " control and jurisdiction " might be considered more complete and accurate. But the basis must be the idea of utilization, which was the primary concept since it related to the actual, economic benefits which the State could derive from the resources of the continental shelf. Control was a secondary concept, since it merely served to guarantee utilization, and to it might be added the concept of jurisdiction, which referred only to the coastal State's power to ensure observance of its regulations as to exploitation. Hence, utilization, far from contradicting the concepts of control and jurisdiction, would complement and clarify them.

23. The Italian delegation considered that the term " natural resources " mentioned in articles 67 and 68 was to be taken as meaning inorganic natural resources only. It held that the depth of 200 metres mentioned in article 67 should be sufficient for the purposes of exploration and exploitation, but was prepared to support reasonable modifications of that limit provided it remained a definite, fixed quantity. With regard to the exploitation of the subsoil of the continental shelf by means of tunnels or derectional drillings having their starting point on land, the rights of the coastal State should not be subject to any depth limit, since such exploitation could not result in any interference with the utilization of the high seas.

24. Commenting on article 72, he referred to the memorandum submitted by the secretariat of the United Nations Educational, Scientific and Cultural Organization (UNESCO), which spoke of " shallow seas between islands and/or continents " which " incontestably form parts of the continental shelf " and, in some cases, " form the raised margin of the continental shelf " (A/CONF.13/2, paragraph 11). The Italian delegation believed that the boundary of the continental shelf appertaining to States whose coasts were opposite to each other and were in the proximity of islands which had to be regarded as forming part of the continental shelf should be determined according to the definition adopted by the International Committee on the Nomenclature of Ocean Bottom Features to the effect that the continental shelf started at the low-water line (A/CONF.13/2, paragraph 6).

25. Mr. ROSENNE (Israel) disagreed with the view that there existed no customary international law which could provide the legal criteria for regulating the problems of the continental shelf. Considering the rapid development of modern science and technology, time should not be given an exaggerated importance as a creative element in the development of customary law. Although the United States proclamation of 1945, the first to introduce the concept of the continental shelf into international law, was of relatively recent date, the matter could reasonably be regarded as fully governed by international law. The existence of a sufficient body of State practice, the widespread acquiescence in that State practice, the large volume of authoritative literature and the work done by the International Law Commission and the General Assembly on the subject all supported that view.

26. Hence the contention that the continental shelf was *res nullius* or *res communis,* or that advanced by the Federal Republic of Germany in its memorandum (A/CONF.13/C.4/L.1) to the effect that, according to the international law in force, the coastal State had no rights over the continental shelf beyond the outer limit of its territorial sea, were not adequate since they were not borne out by State practice or by the teachings of the most highly qualified authors of the various nations.

27. The Committee's discussions would be facilitated if the three basic elements of existing law of the continental shelf were borne in mind. The first related to the extent of the area over which the coastal State might exercise its rights. The principal methods of exploiting the mineral resources of the seabed and subsoil were tunnelling from *terra firma,* drilling from fixed or moving installations, which might be situated in and involve some localized interference with the high seas, and dredging or scraping for sand and mineral-bearing mud on the seabed. Article 71 referred exclusively to drilling, and the definition given in article 67 also appeared to have been established with a view to the technical possibilities of drilling only. So far as tunnelling from *terra firma* was concerned, the International Law Commission in paragraph 11 of its commentary on article 67 stated that it did not intend limiting the exploitation of the subsoil and the high seas by that method. No such provision was, however, contained in the articles themselves. Mining to a depth of 10,000 feet was already a practical proposition on land and, by the same token, it must be considered possible under the sea. Article 67 was therefore insufficiently comprehensive and was not fully consistent with articles 68, 69, 70 and 72, which, apart from details of drafting, correctly stated the general rules of law governing the continental shelf. If a definition of the continental shelf was required, it should include paragraph 11 of the International Law Commissions commentary.

28. The second element related to the purpose for which the coastal State might exercise its rights. That was a strictly functional concept. While the delegation of Israel did not recommend a reversion to the term " mineral resources " previously employed by the International Law Commission, it feared that the term " natural resources " used in article 68 might lead to confusion. In normal practice, the coastal State exercised exclusive rights in the exploitation of sedentary fish on its continental shelf. That was an independent right under existing law. However, since the Conference was principally concerned with formulating rules of law which could provide a satisfactory basis for the economic exploitation of the mineral resources of the seabed and subsoil, the question of sedentary fish might be left aside for the present, provided the rights of coastal States in that respect under existing international

[1] *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858, paras. 76 to 78 and Annex.

law were duly recognized. With regard to bottom fish whose habitat was in the high seas, the question whether a real connexion existed between a coastal State and bottom fish frequenting a given area of the high seas was highly technical and might more appropriately be referred to the Third Committee or to a joint meeting of the Third and Fourth Committees. Lastly, pelagic fish had no connexion with the continental shelf and need not be discussed by the Committee.

29. The third basic element of the existing law related to the status in law of the superjacent waters. These were undoubtedly high seas. The Israel delegation fully endorsed the principle stated in article 69, but felt that additional emphasis might be given to the status of the superjacent waters as high seas by including in the section dealing with the continental shelf some reference to the freedom of the high seas as set forth in article 27. Article 71 provided for certain localized limitations to the freedom of the high seas with the twofold object of protecting installations necessary for the exploration and exploitation of the natural resources of the continental shelf and maintaining the safety of navigation. In view of the importance of that point, his delegation was ready to support any proposal aiming at further clarification of the provisions of article 71.

30. Commenting on the question of disputes, he emphasized that the Conference was not called upon to legislate for concrete situations or, more particularly, for existing or potential disputes between States. It could only set forth some general propositions intended to facilitate the pacific settlement of disputes by judicial or quasi-judicial means. An explanation to that effect might be included in the report on the Committee's work. With regard to article 73, there was force in the argument that more prominence might be given to arbitration, especially in the case of highly technical matters. The final form of the article might therefore have to be reconsidered, as also might its place among the other articles, since the principle of judicial settlement could also apply to problems other than that of the continental shelf. His delegation did not accept the argument that the procedure of the International Court of Justice was too slow for dealing with disputes relating to the continental shelf or to the law of the sea in general. Apart from the Court's power to indicate provisional measures, there was no reason why it should not dispose of its cases rapidly, given the necessary co-operation on the part of litigants.

31. In conclusion, he wondered whether it would be practical to include all the results of the Conference in a single convention. He doubted whether that was the intention of the International Law Commission as expressed in paragraph 27 of the report covering the work of its eighth session. It might be preferable to use another form of codification for the somewhat generalized rules envisaged for the continental shelf and to embody the substance of the agreement reached thereon in a separate declaration. Such a course, which was not excluded by General Assembly reolutions 899 (IX) or 1105 (XI) or by the International Law Commission, would avoid excessive rigidity in dealing with a dynamic situation. That, however, was merely offered as a suggestion and did not constitute a formal proposal.

32. Mr. DE LA PRADELLE (Monaco) said that the question of the continental shelf fell under article 15 of the statute of the International Law Commission (General Assembly resolution 174 (II)), which spoke of the " preparation of draft conventions on subjects which have not yet been regulated by international law ". With the exception of a few regional agreements, the concept of the continental shelf was so far embodied only in unilateral declarations. It could not be claimed that the rights of a coastal State over the seabed and subsoil of the sea in the proximity of its coast were already recognized, whether directly or implicitly, by international law.

33. The view that the continental shelf was subject to State sovereignty was not substantiated by the criteria of territorial sovereignty or by the general principles of international law ; neither was it correct to argue that State practice in that respect fulfilled the conditions of a customary rule of international law.

34. The problem of the continental shelf formed part of the law of nations and was of vital interest to all countries, whether or not they possessed a sea coast. The need for appropriate regulation of the problem was dictated largely by economic considerations. Articles 68 to 73 provided the basis for an adequate interim solution, on condition that none of those articles, and most particularly article 73, was detached from the others by the operation of a reservation.

35. It should be borne in mind, however, that the International Law Commission did not exclude the possibility of internationalization of the exploitation of the natural resources of the continental shelf at some time in the future. Speaking in the Sixth Committee of the General Assembly during its eleventh session, Mr. François, General Rapporteur of the International Law Commission, had mentioned the fact that the possible establishment of an international office of the sea had been considered by the Commission ;[1] and a reference to the same question was made in paragraph 9 of the International Law Commission's commentary on article 68. Such an organization, set up in conformity with Articles 55 and 59 of the United Nations Charter and comprising in its membership — apart from representatives of interested States — those of UNESCO, the World Health Organization (WHO), the Food and Agriculture Organization (FAO) and other specialized agencies, would help governments in the adoption of decisions fully consistent with the law of the sea. His delegation warmly supported the suggestion that such an organization should be created and was prepared to submit a resolution to that effect which, if adopted, could be annexed to the final act of the Conference.

The meeting rose at 1.15 p.m.

---

[1] *Official Records of the General Assembly, Eleventh Session, Sixth Commission*, 500th meeting, para. 51.

TENTH MEETING

Friday, 14 March 1958, at 10.45 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. SAMAD (PAKISTAN), MISS WHITEMAN (UNITED STATES OF AMERICA), MR. MOLODTSOV (UNION OF SOVIET SOCIALIST REPUBLICS), MR. CARMONA (VENEZUELA), MR. DOUIK (TUNISIA) AND MR. GROS (FRANCE)

1. Mr. SAMAD (Pakistan) observed that the question of the exploitation of the seabed and subsoil had been receiving increasing attention in recent years as a result of technical developments, particularly with regard to submarine oil-drilling. The erection of derricks on the open sea and the need to protect them inevitably led to some curtailment of the freedom of navigation, and therefore raised complex legal considerations.

2. In his proclamation of 1945, the President of the United States had made it clear that the rigths of the United States of America over its continental shelf in no way affected the principle of the freedom of the high seas. Subsequent national proclamations on the subject, including those issued by Pakistan and Australia, embodied similar reservations. The Pakistani delegation therefore welcomed the provisions of article 69. Indeed, it was in broad general agreement with all the articles relating to the continental shelf, although it shared the misgivings about articles 67, 71 and 72 expressed, among others, by the representatives of France (3rd meeting), Norway and the United Kingdom (4th meeting).

3. The effect of the inclusion in article 67 of the criterion of exploitability of the natural resources of the maritime areas concerned was to abolish any definite limit to the continental shelf, replacing it by the possibility of limitless extension subject only to technical considerations. The difficulty that arose in cases where the same continental shelf was adjacent to the territories of States whose coasts were opposite to each other or was adjacent to the territories of adjacent States was admittedly covered by paragraphs 1 and 2 of article 72. Nevertheless, the absence of a fixed limit to the continental shelf was likely to lead to disagreement between States. While it might be argued that the criterion of depth alone was imperfect in that it placed States with steeply shelving coasts at some disadvantage, the Pakistani delegation considered that, in the interests of providing for a specific and objective delimitation, the second part of article 67, relating to the criterion of exploitability, should be deleted.

4. With regard to article 68, the view expressed by the International Law Commission in paragraph 2 of its commentary thereon — to the effect that " the rights of the coastal State are exclusive in the sense that, if it does not exploit the continental shelf, it is only with its consent that anyone else may do so " — was a sound one, subject, of course, to the limitation imposed by article 70. His delegation could not support the thesis in the memorandum submitted by the Federal Republic of Germany (A/CONF.13/C.4/L.1), because the ideas advocated therein were entirely foreign to international practice and to the generally accepted concept of the continental shelf.

5. He accepted the International Law Commission's views on the meaning of the term " natural resources ", referred to in article 68.

6. It would be preferable if the width of safety zones were clearly specified in article 71 ; moreover, the term " due notice " in paragraph 4 thereof was ambiguous, and should be more clearly defined.

7. In discussing article 72, paragraph 2, during the second stage of its work, the Committee should consider whether the measurement necessary for the determination of boundary lines should be made from the coast itself or from an imaginary straight line drawn along the coast, ignoring any indentations in the coastline.

8. With regard to article 73, it was common knowledge that certain States did not accept the compulsory jurisdiction of the International Court of Justice ; in particular, the International Court was not the accepted forum for the adjudication of disputes between the Commonwealth countries. Therefore, unless such countries agreed on another method of peaceful settlement, the only solution open to them would be that provided for in Article 33 of the Charter of the United Nations. The Committee might consider including in article 73 a specific provision somewhat on the lines of article 57.

9. Miss WHITEMAN (United States of America) emphasized that in his proclamation of 28 September 1945 the President of the United States had included an explicit statement to the effect that the character as high seas of the waters above the continental shelf was in no way affected by the proclamation. Similar provisions had also been included in her country's subsequent domestic legislation on the continental shelf.

10. Certain national proclamations issued on the same subject since 1945 differed from the United States proclamation in the important respect that they claimed not only rights over the resources of the continental shelf, but also sovereignty over the superjacent waters. The United States of America upheld the view that the high seas could not be appropriated by the coastal State in connexion with a claim to the continental shelf ; such unilateral action was contrary to international law, which established the high seas as the common property of all countries. Her country's claim to its continental shelf was based on the view that control of the development of the continental shelf should reside in the coastal State.

11. Commenting on the articles before the Fourth Committee, she strongly supported, in principle, the general type of régime set forth in those articles. She accepted the depth of 200 metres, with a precise equivalent indicated in fathoms, as an appropriate definition of the limit of the continental shelf, but intimated doubts about the wisdom of adopting the additional criterion of possible exploitation, particularly in conjunction with article 72, paragraph 2, dealing with the boundaries between the continental shelves of adjacent States.

12. With regard to article 68, the United States proclamation of 1945 and subsequent United States domestic legislation spoke of " jurisdiction and control " rather than of " sovereign rights ". In order to make it clear that the waters above the continental shelf were not affected, the United States delegation would like to see the word " sovereign " deleted, while agreeing to the retention of the word " rights ".

13. She strongly endorsed the provisions of article 69. With regard to article 72, paragraph 2, she pointed out that, as at present worded, it might create serious problems, and therefore required careful examination. She drew attention to a comparable provision in article 14.

14. The United States delegation would favour the the inclusion of article 73 in any convention on the subject of the continental shelf.

15. So far as the definition of the term " natural resources " was concerned, it was obvious that it included mineral resources, since the minerals of the continental shelf had the same origins as those of the land domain. Living resources, on the other hand, were essentially products of the waters, and might well be regarded as appertaining to the high seas. The most satisfactory criterion for defining those marine organisms which might, on the basis of long established custom and usage, be recognized as natural resources of the continental shelf appeared to be that of attachment to the seabed during the harvestable stages of life. Most other criteria would present extremely difficult problems of definition, might impair the principle of the freedom of the high seas and might well impede the proper development and conservation of the resources concerned. Referring in that connexion to the Mexican representative's statement at the 9th meeting, she would explain that the Submerged Lands Act of the United States of America, passed on 22 May 1953, related solely to her country's territorial sea and to the land beneath it ; the definition of natural resources in section 2 (*e*) of the Act related both to the land and the water and bore no relation to the outer continental shelf.

16. In conclusion, she remarked that much of the Fourth Committee's work formed part of the " progressive development of international law " envisaged in Article 13 of the Charter of the United Nations and in Article 15 of the Statute of the International Law Commission (General Assembly resolution 174 (II)). At the same time, due consideration should be given to existing international law relating to the problem of the continental shelf, such as that on the freedom of the high seas.

17. Mr. MOLODTSOV (Union of Soviet Socialist Republics) said that the Fourth Committee's work would be successful if it was conducted in a desire to achieve mutual understanding and if due consideration was given both to the legitimate interests of individual States and to the more general interests of the strengthening of peace and international collaboration. The International Law Commission's articles on the continental shelf were largely satisfactory and provided a solid basis for the Fourth Committee's deliberations.

18. In recent years, a number of States had issued proclamations claiming certain rights over the continental shelf. For coastal States the utilization of the resources of the continental shelf represented a source of wealth likely to increase in importance as science and technology advanced from year to year. The resources of the seabed and subsoil of the continental shelf constituted, in the main, a continuation, or a part, of the land resources. The coastal States were therefore justified in claiming the right to explore, exploit and protect the natural resources of the continental shelf.

19. The proposals of certain delegations which disregarded the interests of the coastal State with regard to the continental shelf and proposed to establish for all States the right to exploit the resources of the continental shelf, considering that any other régime would conflict with the freedom of the high seas, were not acceptable. While the problem of the continental shelf was certainly connected with the principle of the freedom of the high seas, it was also an independent problem with characteristic features of its own. For example, the continental shelf — unlike the seas and oceans — was not a means of communication between nations. Moreover, the exploitation of the natural resources of the continental shelf was generally connected with the erection of permanent installations which necessarily entailed the exercise of a State's authority, whereas the same could not be said of the freedom of navigation and fishing.

20. There were also other features of the problem. Adoption of the proposals for establishing the free exploitation of the resources of the continental shelf and failure to take into account all those features in formulating the rules for the juridical régime of the shelf would lead to an intensified struggle for possession of the submarine areas of the high seas, as a result of which the wealth of the continental shelf might pass into the hands of undertakings of the large States to the detriment of the small and medium-sized countries.

21. The necessary recognition of the coastal State's rights to explore and exploit the natural resources of the continental shelf should not, however, result in the abolition of the principle of the freedom of the high seas, which was one of the main foundations of peaceful relations between countries and was in the interests of all nations.

22. The International Law Commission, in regarding the sovereign rights of the coastal State in the exploration and exploitation of the resources of the continental shelf and in formulating provisions embodying the principle of the freedom of the high seas, had found a completely equitable solution.

23. The inclusion of the concept of sovereign rights in article 68 was entirely correct from the standpoint of international practice and international law, unlike the term " jurisdiction and control ", which was both narrower and more ambiguous. Similarly, the definition of the continental shelf provided in article 67 was, in general, satisfactory.

24. With regard to article 73, he remarked that the settlement of disputes between States formed part of procedural law rather than of substantive law. It therefore fell outside the tasks properly assigned to the Fourth Committee, particularly as the question of the settlement of disputes related not only to the articles on the continental shelf but also to other articles on the law of the sea. The subject should be considered apart but

for the time being, there was no need for the Committee to discuss it, since it was covered by the United Nations Charter, by the Statute of the International Court of Justice and by special international conventions. His delegation supported the proposals of certain other delegations that article 73 should be replaced by a provision to the effect that disputes between States over the continental shelf should be settled by peaceful means in accordance with the Charter of the United Nations.

25. Mr. CARMONA (Venezuela) said that the International Law Commission's deliberations had shown that the concept of the continental shelf was compatible with the principle of the freedom of the high seas provided the rights and duties of States in those waters were clearly defined, and the draft articles provided safeguards for the freedom of navigation and fishing and for the conservation of the living resources of the sea.

26. Venezuela had previously defined its position at the Conference of Ciudad Trujillo and at the eleventh session of the General Assembly of the United Nations. It was in general agreement with the articles drafted by the International Law Commission. The concept of the continental shelf was based on the evidence of the sciences concerned, which had established that it was the continuation of the mainland. His delegation accepted that idea, and accordingly considered that the mineral resources occurring in the continental shelf belonged to the coastal State in the same way as did the resources of the mainland ; it therefore accepted the definition in article 67.

27. With reference to article 68, he believed that the International Law Commisson had not sufficiently considered the principal purpose of the concept of the continental shelf, which, by giving exclusive rights over the submarine areas of its territory to the coastal State, eliminated dangerous competition between States for the possession of such areas. To limit the rights of the coastal State to the exploration and exploitation of the natural resources of the seabed and subsoil was contrary to the spirit of that concept. Venezuelan legislation accepted no such limitation, since it was based on the view that the rights in question were based on sovereignty and therefore absolute. To accept such limitation would imply that any coastal State which was unable to exploit fully the resources of its continental shelf would be equally unable to claim sovereign rights over it and that any other State could exercise those rights merely by undertaking exploitation. That would amount to acceptance of the principle of occupation already rejected by the International Law Commission. International exploitation of the continental shelf would not be a practical possibility until the day of universal brotherhood arrived, and in paragraph (3) of the introductory commentary to the draft articles on the continental shelf it had been recognized by the International Law Commission as unrealistic. Venezuela accordingly found article 68 unacceptable on the grounds that it was too ambiguous and unrealistic to form a basis for international law. The admitted identity of or contiguity between the mainland and the submerged areas was sufficient to set up the sovereignty of the coastal State. Article 68 should recognize that sovereignty in clear terms, and thus forestall the disputes that were always likely to arise from the interpretation of restrictive provisions.

28. His delegation was prepared to recognize the rights of States to lay cables on the continental shelf, but considered that prior consultation with the coastal State and its consent were essential.

29. With regard to article 72, Venezuela did not consider that it was possible to provide a general rule to cover all cases. It could not accept the proposal in paragraph 1 that, in cases where the same continental shelf was adjacent to the territories of two or more States whose coasts are opposite to each other, its boundary should be the median line, since the continental shelf could not be divided down the middle. Bilateral agreements between the States concerned could take account of the special conditions obtaining in any given case and would provide a more practical solution.

30. His Government could not accept article 73 as it stood. He realized that States would wish to know what procedure was to be followed in case of disagreement before they committed themselves to decisions on certain subjects. However, no final agreement could be reached without preliminary agreement between the States concerned. He believed that it was the general view in Latin America that it would be better to provide for a more graduated procedure, passing through stages of enquiry and mediation, and only in the last resort accepting the compulsory jurisdiction of an international body.

31. Mr. DOUIK (Tunisia), although welcoming the International Law Commission's recognition of the geological reality of the continental shelf, regretted that the definition in article 67 was so vague and ambiguous. In one sense, the inner limit of the continental shelf was not hard to define, since it coincided with the outer limit of the territorial sea, a problem that was being discussed by the First Committee. The definition of the outer limit of the continental shelf, however, was open to interpretation and might well lead to disputes. In its definition, the International Law Commission had made use of two criteria, the mathematical notion of the 200-metre isobath and the more subjective notion of possible exploitation, the latter of which must depend on the technical capacity of the coastal State. Those two criteria were to some extent contradictory. A study of the two preparatory documents submitted by the Food and Agriculture Organization (FAO) (A/CONF.13/12 and A/CONF.13/13) and the preparatory document on the exploitation of the mineral resources of the continental shelf (A/CONF. 13/25) showed that although there was perhaps no theoretical limit to technical capacity to exploit the resources of the continental shelf, exploitation was in fact limited by various factors, such as the maximum depth at which favourable conditions obtained for the living resources of the sea. In the same way, there was a depth beyond which the cost of erecting installations and operating them would make the exploitation of mineral resources unprofitable. It appeared that the best criterion for defining the continental shelf was the 200-metre isobath, which was in accordance both with the geological configuration of the continental shelf and with the availability of its resources. The criterion of technical capacity to exploit the resources of the continental shelf had certain inherent dangers, and he would speak further on that point at a later stage.

32. According to article 68, the coastal State exercised sovereign rights for the purpose of exploring and exploiting the natural resources of the continental shelf. The International Law Commission had thought it necessary in article 69 to safeguard the freedom of the superjacent waters and the air space above them. However, the sovereign rights of the coastal State over the continental shelf were not in conflict with the principle of the freedom of the superjacent waters or of the air space above them, since, according to the definition in article 67, the continental shelf included the seabed and subsoil of submarine areas alone. His delegation did not believe that any misunderstanding was possible on that point. It fully supported the freedom of the high seas in the interests of the international community, and more especially in the interests of scientific research and the conservation of the living resources of the sea. If article 68 were made more specific by the addition of some such phrase as " safeguarding the freedom of the superjacent waters ", he felt that article 69 would become superfluous.

33. He agreed with the provisions of article 70, but felt that it would be better to find some more precise form for the notion of " reasonable measures ", which would tend to give rise to disputes.

34. His delegation would prefer to see a specific maximum limit for safety zones stipulated in the text of article 71.

35. With regard to article 72, he considered that the delimitation of the continental shelf between States adjacent to or opposite each other should take account of the geographical configuration of the region, and that considerable flexibility would have to be used in applying that article.

36. Mr. GROS (France) said that the Fourth Committee was fortunate in two respects : first, that it had only seven articles to consider ; and secondly, that it had the opportunity of legislating in a field not previously regulated by international law. To legislate in international law meant reaching agreement between governments, since there was no international parliament other than that provided by diplomatic conferences. Nevertheless, it required the same virtues of self-restraint and fairness in resolving legitimate interests as did legislating in any democratic State. It was in that spirit that he proposed to examine the general problems presented by the seven articles on the continental shelf.

37. The first question was that of the recognition of the concept of the continental shelf. The best way of persuading those who were reluctant to accept that concept was to show them what the legal regulation of the continental shelf would mean in practical terms. If the Committee could agree on the rules of a convention, he thought that it might have no difficulty in developing from them a definition of the principle of law to set at the head of the convention. If that view were accepted, he suggested that the following problems would have to be solved. First, the question of whether all the resources of the continental shelf were to be exploited, or merely those of its seabed and subsoil to the exclusion of the superjacent waters. Secondly, who was to enjoy the rights of exploitation ; the coastal State, the international community or the first comer? Thirdly, what were the nature and extent of the rights necessary for exploitation? If that issue were first considered, the knotty problem of choosing between full sovereignty and restricted rights might solve itself. Fourthly, what adjustment might be required to existing rules of international law in relation to neighbouring legal situations which might be affected by an international régime for the continental shelf? Such adjustment lay at the heart of the matter in in legislating in any domain, and would involve weighing the different interests of international navigation on the high seas and fishing in traditional waters.

38. It would be more fruitful to try to reach agreement on what should be the basis of a convention on the continental shelf, rather than to engage in repeated clashes of principle over each separate article. The outcome of such an approach might well be that the Committee, instead of finding itself divided into groups by mere verbal differences, might suddenly find itself able to co-operate in a joint creative achievement.

The meeting rose at 12.30 p.m.

ELEVENTH MEETING

Monday, 17 March 1958, at 10.45 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. ZAORSKI (POLAND), MR. BELINSKY (BULGARIA), MR. LEE (REPUBLIC OF KOREA), MR. BUU-KINH (REPUBLIC OF VIET-NAM), MR. LIMA (EL SALVADOR), MR. GARCÍA AMADOR (CUBA) AND MR. OSMAN (INDONESIA)

1. Mr. ZAORSKI (Poland) said that the articles on the continental shelf, drafted by the International Law Commission, provided a satisfactory basis for the Fourth Committee's work. The fact that they had been included in part II of the draft, under the general heading of " High Seas ", implied that the régime proposed for the continental shelf formed part of the general régime of the high seas, and hence could not run counter to the principle of the freedom of the high seas ; accordingly, the coastal State, in exercising its rights over the continental shelf, could not infringe that principle.

2. Viewed from that angle, the wording of article 68 was too broad, since it did not clearly specify that the sovereign rights of the coastal State over the continental shelf did not extend to bottom fish or to other marine organisms, such as *crustacea,* which had no permanent association with the seabed and moved about freely during certain periods of their lives. Whereas the position concerning bottom fish was defined in paragraph 3 of the International Law Commission's commentary on article 68, that concerning *crustacea* was left open. The problem of the physical and biological association with the seabed of living marine species was a highly complex one, as was clear from the document on that subject submitted by the secretariat of the Food and Agriculture Organization (FAO) (A/CONF.13/13). For